

Appln. No. 10/729,739
Amdt. dated October 31, 2006
Reply to Office Action of October 18, 2006

MPEP §706.07 provides in part: "Switching from one subject matter to another in the claims presented by applicant in successive amendments, *or from one set of references to another by the examiner in rejecting in successive actions claims of substantially the same subject matter*, will alike tend to defeat attaining the goal of reaching a clearly defined issue for an early termination,....." "*.....present practice does not sanction hasty and ill-considered final rejections.*"

Here, claims to substantially the same subject matter are finally rejected on completely new references, and none of the previously cited references are applied against any claim.

Unamended dependent claims 9, 17 and 24 are rejected on newly cited U.S. Patent No. 6,194,659 to Cornu. To contend that the citation of Cornu against these unamended dependent claims was required because of amendments made to the parent claims is disingenuous.

All of the claims are to substantially the same subject matter, and the amendments that were made do not provide a basis for a final rejection on newly cited references. By way of example, consider claim 12 and newly cited U.S. Patent No. 4,686,738 to Bladh. Claim 12 was amended by changing ENT to "electrical nonmetallic tubing." That cannot possibly be viewed as a basis for a final rejection on newly cited art.

Claim 12 was amended by inserting that the fitting is "one-piece." This did not require the examiner to go out and search for a one-piece fitting because Bladh discloses a two-piece fitting. That the Examiner is using only one piece of the two-piece Bladh fitting in the rejection is of no consequence. The fact remains that insertion of the "one-piece" language did not require the Examiner to find a new reference that teaches the use of a one-piece fitting because Bladh discloses a two-piece fitting.

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Claim 12 was amended by reciting that the surface to which the fitting is attached is a concrete form. Bladh has nothing to do with fittings for use with concrete, and this amendment to the claim cannot possibly form a basis for a final rejection on the new citation of Bladh.

Claim 12 was amended to recite: "said body peripheral wall and endwall being continuous and free of openings therethrough around said socket to preclude entry of poured concrete into said socket and said cavity through said body peripheral wall and endwall." Bladh has slots 15 that remain open when a cable extends therethrough. "In the unloaded state, the diameter of the opening in the annular wall 14 should be slightly less than or equal to the diameter of the cable for which the cable lead-in device is intended." (Bladh column 3 lines 30-34)

The "fingers" in Bladh that surround the cable are bent upwardly to grip the cable as described in lines 39-56 of column 3. Thus, the slots 15 are not closed when the wall 14 is bent to grip the cable. This shows that the recitation of the endwall as being continuous and free of openings around the socket did not require the Examiner to go out and find a new reference. The fact is that the newly cited reference to Bladh does not have a fitting that is free of the recited openings to preclude entry of concrete into the fitting. The slots 15 in Bladh clearly would allow entry of poured concrete into the interior of the fitting, and Bladh does not teach or suggest that slots 15 are closed when a cable extends through the circular opening 16 which is dimensioned to be equal to or just slightly smaller than the cable diameter..

If the Examiner refuses to withdraw the premature final rejection, she is requested to explain what amendment required the rejection of claims 9, 17 and 24 on the newly cited Cornu patent. The Examiner also is requested to explain what new recitations in claim 12, which is to substantially the same subject matter as previously, required the citation of Bladh. The fact is

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that Bladh is completely unrelated and not relevant to any of the new recitations in claim 12.

The Examiner also is requested to explain why the final rejection does not violate the principles set forth in MPEP §706.07.

For the above reasons, withdrawal of the premature final rejection is appropriate.

Respectfully submitted,



H. Duane Switzer
Reg. No. 22,431
Jones Day
North Point
901 Lakeside Avenue
Cleveland, OH 44114-1190
216-586-7283